



Memorandum

To: Members of the Senate Reforms Restructuring and Reinvention Committee
From: Chris Fisher, President
Associated Builders and Contractors of Michigan
Date: March 9, 2011
Re: Support of Senate Bill 165

On behalf of our statewide membership we welcome and encourage your support of Senate Bill 165 to create the Fair and Open Competition in Governmental Construction Act. This is a common sense bill that will promote two important objectives that all citizens can easily support: **Equal opportunity and fiscal accountability.**

Important industry issue such as training, safety and quality of work are not affected by this legislation. SB 165, is limited and very clear in scope simply stating that all Michigan construction workers and firms will be protected from being discriminated against and denied work opportunities based on their labor status.

Nobody should be denied equal access to opportunity because they decide to affiliate with a labor union or not affiliate with a labor union. SB 165 explicitly protects businesses and workers against such discrimination to ensure that all workers and companies, union and non-union alike, may work on projects funded by their own tax dollars¹.

Anti-competitive contracts for public construction projects create a special-interest monopoly and violate free enterprise principles of full, fair and open competition. The result of less competition is that construction costs increase by as much as 10 to 20 percent resulting in citizens being denied the fiscal accountability they deserve on public construction contracts.²

Moreover, the proposed open competition legislation explicitly ensures against this being another "union verses non-union" issue. Instead the language protects everyone, union *and* non-union, to ensure equal opportunity for all citizens and businesses in government construction. On one hand, it prohibits anti-competitive non-union-only contracts, while, on the other hand, prohibiting anti-competitive union-only contracts. Both anti-competitive extremes are prohibited.

Like other reform-oriented states, Michigan must pass legislation that will neither prohibit nor require agreements with union organizations for governmental construction projects.

Such a law will ensure that the state does not discriminate against any business or worker on the basis of union affiliation. Michigan taxpayers will also benefit from having public construction that is completed by the lowest, most responsible and qualified bidder to ensure greater accountability of public funds.

¹ See attached examples of public contracts that deny workers and companies from performing work on public projects based entirely on labor affiliation.

² See attached list of peer-reviewed academic, institutional and governmental studies

Analysis of the Impacts on the Jefferson County (NY) Courthouse Complex through Project Labor Considerations (September 2000)

This study, commissioned by the Jefferson County, New York, Board of Legislators, and completed by Professor Paul G. Carr, P.E., concluded that "[t]he additional costs estimated with the use of a PLA could range upwards of \$955,000. With the loss of even one general contractor from the bidding [as a result of the PLA], the cost increase could approach \$200,000." On this estimated \$14 million project, this would mean a cost increase of more than of 7 percent.

Weber Merritt Survey Finds Washington D.C. Contractors Less Likely to Bid on Projects with PLAs

In a 2000 survey of Washington D.C. area public works contractors regarding PLAs and public projects, over 70 percent said they would be less likely to bid on a project with a government-mandated PLAs.

Task Order No. 99-1: Project Labor Agreement (PLA) Study (June 2000)

The Clark County School District (CCSD) in Nevada, retained Resolution Management to perform an objective study of the use of union-only PLAs on School District Projects. In an independent and unbiased study, they found "no compelling reason for CCSD to enter into PLAs for school construction at this time."

Government-Mandated Project Labor Agreements in Construction: A Force to Obtain Union Monopoly on Government-Funded Projects (January 2000)

This study by Dr. Herbert R. Northrup of the University of Pennsylvania's Wharton School, concludes that "analysis shows that the justifications for imposing government-directed project agreements are flimsy at best. They are neither based upon fact nor do they conform to the realities of the construction industry."

Fitchburg State College Project Labor Agreement Survey Results (1998)

This 1997-1998 survey conducted by researchers at Fitchburg State College found that over 66 percent of prime contractors identified as open shop by project managers on the Boston Harbor Cleanup Project were in fact union contractors. Additionally, 54 percent of the subcontractors surveyed that the project manager claimed to be open shop were either union contractors or didn't work on the project at all.

Perception and Influence of Project Labor Agreements on Merit Shop Contractors (1997)

This 1997 study conducted by researchers at the University of Washington found that "when the virtues of using a PLA are evaluated..., it appears PLAs might not be necessary on any construction projects."

Roswell Park Cancer Institute Letters (March 1995)

This ABC study of the taxpayer costs for Roswell Park Cancer Institute in Buffalo, New York, assessed bids for the same project both before and after a PLA was temporarily imposed in 1995. It revealed that there were 30 percent fewer bidders to perform the work and that costs increased by more than 26 percent when the PLA was in effect.

U.S. Government Accounting Office (GAO) Report: Project Labor Agreements: The Extent of Their Use and Related Information (May 1998)

A U.S. General Accounting Office (GAO) report, issued May 5, 1998, demonstrated that it is nearly impossible to show any cost savings or increased quality derived from the use of union-only project labor agreements, largely because of the difficulty in finding two identical projects, with or without a PLA, to study.

Congressional Research Service Report for Congress on PLAs (August 24, 1999)

"Project Labor Agreements In Federal Construction Contracts: An Overview and Analysis of Issues," by Gail McCallion, Specialist in Labor Economics, Economics Division.

Contracts Denying Michigan Workers and Companies Work Opportunity Based on Labor Affiliation

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2496 CONTRACT

MEMORANDUM OF UNDERSTANDING

BETWEEN

[REDACTED]

and

THE MICHIGAN BUILDING AND CONSTRUCTION TRADES COUNCIL

for the

MICHIGAN STATE UNIVERSITY BRODY HALL PROJECT

Located in

EAST LANSING, Michigan

INTENT AND PURPOSE

This Memorandum of Understanding is entered into for work performed on the Brody Hall Project located in East Lansing, Michigan (hereinafter called the "Project"), by and between Clark Construction Company ("CM") (acting for and on behalf of the Owner, Michigan State University), and the other contractors signatory hereto (hereinafter referred to both individually and collectively as the "Employer"), and the Michigan Building and Construction Trades Council, AFL-CIO, and its affiliated local unions signatory hereto (hereinafter collectively referred to as the "Unions" or individually as the "Union"). The CM, when self-performing, shall be included within the meaning of "Employer" as used herein.

The purpose of this Agreement is to ensure that all construction work for the project shall proceed economically, efficiently, continuously and without interruption.

ARTICLE VI - PROJECT LABOR AGREEMENT

Section 6.1 The parties understand and agree that each contractor at all tiers of the Project shall, prior to beginning work on the Project, become an Employer signatory to this Memorandum of Understanding and agree to comply for this Project with the respective current collective bargaining agreements of the appropriate local union affiliates of the Michigan Building and Construction

NOTE: *There is project labor Agreement language that explicitly states that only workers and businesses that abide by collective bargaining agreements are permitted to perform work on a public project.*

CONTRACT DOCUMENTS
FOR

CATHERINE STREET WATER MAIN REPLACEMENT PROJECT



March, 2011

FILE NO. 2007.080
BID NO. ITB - 4130A
DWRF NO. 7333-01

PROJECT MANAGEMENT UNIT

CITY OF ANN ARBOR
100 North Fifth Avenue
Ann Arbor, Michigan 48104

MEMORANDUM OF UNDERSTANDING

1. WORK DISPUTES

In return for the promise made in paragraph (3) below, the parties agree that there will be no strike, work stoppage or lock-out for the duration of this Memorandum. Any jurisdictional dispute shall be resolved through normal procedures.

There will be a job conference with all contractors and sub-contractors prior to starting work.

2. COFFEE BREAKS

There shall be no organized coffee breaks.

3. PAYMENT OF FRINGES

Any Union having a claim against a contractor or subcontractor for unpaid wages and/or fringe benefits for work performed on the project shall give written notice of such claim to such contractor or subcontractor (with a copy of the notice to the Construction Manager or General Contractor) within three (3) business days after such claim has become known. Upon receipt of such written notice, the Construction Manager or General Contractor involved shall withhold an amount equal to the claim from the next disbursement payable to the contractor, pending resolution of the dispute satisfactory to the Construction Manager or General Contractor. In the event of any such dispute, the Union agrees to use its best efforts to pursue any legal remedies available, including litigation by Fund Trustees. It is understood that the intent to this section is to accomplish prompt and effective resolution of any disputes between the Union and any contractor or subcontractor over payment of wages and fringes.

UNION WORK

The parties understand and agree that each contractor and subcontractor at all tiers of this project shall, prior to beginning work on the project, become signatory parties to the respective current collective bargaining agreements of the appropriate Local Unions of the Washtenaw County Skilled Building Trades Council.

(Contractor, Owner or Construction Manager)

(Representative of Washtenaw County Skilled
Building Trades Council)

(Project Description)

(Date)

THIS MEMORANDUM APPLIES ONLY TO THE PROJECT AND/OR CONSTRUCTION ABOVE DESCRIBED.

WHITE — Union Copy
GREEN — Contractor or Construction Manager Copy
CANARY — Owner Copy
PINK — CUB Copy
GOLD — Project Copy

Printed On Site

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE GENERAL CONTRACTOR

(HEREINAFTER REFERED TO AS "GC")

AND

THE MICHIGAN BUILDING AND CONSTRUCTION TRADES COUNCIL

FOR THE

NEW CITY MARKET PROJECT


LOCATED IN

LANSING, MICHIGAN

INTENT AND PURPOSE

This Memorandum of Understanding is entered into for work performed on the New City Market Project located in Lansing, Michigan (hereinafter called the "Project"), by and between the GC and the other contractors signatory hereto (hereinafter referred to both individually and collectively as the "Employer"), and the Michigan Building and Construction Trades Council, AFL-CIO, and its affiliated local unions signatory hereto (hereinafter collectively referred to as the "Unions" or individually as the "Union"). The General Contractor (hereinafter referred to as GC), when self-performing, shall be included within the meaning of "Employer" as used herein.

ARTICLE VI - PROJECT LABOR AGREEMENT



Section 6.1 The parties understand and agree that each contractor at all tiers of the Project shall, prior to beginning work on the Project, become an Employer signatory to this Memorandum of Understanding and agree to comply for this Project with the respective current collective bargaining agreements of the appropriate local union affiliates of the Michigan Building and Construction Trades Council, and shall in consideration for the Union's agreement not to strike, agree to comply for this Project with any subsequent collective bargaining agreements negotiated during the term of the Project, and comply with said agreements retroactive to their respective effective dates.

The GC hereby agrees to notify the designated representative of the Michigan Building and Construction Trades Council of the successful contractors prior to the start of work by those contractors. The GC agrees to establish a Labor Management Committee to resolve and/or review issues that may arise during the life of the Project. The Labor Management Committee meetings will be held as needed on the Project site.

Peer-Reviewed Academic, Institutional and Governmental Studies

Report Calls Washington, D.C. Nationals Ballpark PLA a Failure (November 2009)

A November 2009 report by DC Progress, "The True Cost of the Washington Nationals Ballpark Project Labor Agreement," exposes the problems that PLAs present for DC taxpayers, as well as unemployed, and underemployed residents. The report focuses on the, "broken promises of the D.C. Ballpark PLA, in order for policymakers, stakeholders in the local economy, and citizens to understand the burdens that PLAs impose on state and city governments. The Nationals Park PLA created a huge barrier for the District's nonunion workforce: 85 percent of construction workers and 95 percent of minority-owned contractors were left out of work."

Beacon Hill Institute Study Says Federal PLAs and Executive Order 13502 Will Harm Taxpayers (September 2009)

A study released Sept. 23 by the Beacon Hill Institute (BHI), "Project Labor Agreements on Federal Construction Projects: A Costly Solution in Search of a Problem," found that PLAs significantly increase construction costs on federal projects. Had President Obama's pro-PLA Executive Order 13502 been in effect in 2008, and all 2008 federal construction projects worth \$25 million or more had been performed under PLAs, it would have increased the cost to federal taxpayers by \$1.6 billion to \$2.6 billion.

In addition, the BHI review of federal construction projects from 2001-2008, the years under which government-mandated PLAs were prohibited, also revealed that there were no instances in which labor disruptions occurred that resulted in significant project delays or increased costs. The study concludes that "the justifications for PLAs provided by Executive Order 13502 are unproven."

Government Funded Study Finds PLAs Increase Costs and Offer Limited Value (June 2009)

A June 2009 study conducted by property and construction consulting firm Rider Levett Bucknall prepared for the U.S. Department of Veterans Affairs (VA) Office of Construction and Facilities Management found that PLAs would likely increase construction costs by as much as 9 percent on three of the five construction markets (Denver, New Orleans and Orlando) in which the VA is planning to build hospitals. The VA hired this firm to evaluate the cost impact of PLAs in various markets where the VA plans to build hospitals.

Study Questions Effectiveness of DC Baseball Stadium PLA (October 2007)

A PLA on the District of Columbia's new \$611 million baseball stadium has completely failed to ensure that local residents get the majority of work on the project, according to a report released Oct. 2, 2007 by the District Economic Empowerment Coalition.

Beacon Hill Institute Report Examines Case Study Supporting Previous PLA Research on the Effect of PLAs on School Construction Costs (December 2006)

A December 2006 report by the Beacon Hill Institute at Suffolk University, "Project Labor Agreements and Financing Public School Construction in Massachusetts," reviews a real-world case study supporting BHI's previous research on the effect of PLAs on school construction costs. In 2006, the City of Fall River, MA bid three school construction projects under a PLA. Then, after attracting few bidders, with those providing bids coming in well above the projected budget, the city canceled the PLA and reopened the bidding process. The report found that the city of Fall River saved \$5.8 million on total construction bids by removing the PLA and bidding the project using free and open competition.

Beacon Hill Institute Study Finds PLAs Increase Cost of School Projects in New York (May 2006)

This study conducted by the Beacon Hill Institute at Suffolk University found that PLAs add an estimated \$27 per square foot to the bid cost of construction (in 2004 prices), representing an almost 20% increase in costs over the average non-PLA project.

Iowa Events Center PLA Study (March 2006)

The Public Interest Institute, a nonpartisan, nonprofit research and educational institute in Mt. Pleasant, Iowa, has released a new study that concludes the PLA on the Iowa Events Center project in downtown Des Moines, placed an "unnecessary burden" on local workers, businesses and taxpayers.

Union-Only Project Labor Agreements: The Public Record of Poor Performance (2005 Edition)

The 2005 edition of ABC General Counsel Maury Baskin's report on union-only PLAs documents a record of union-only construction projects experiencing a consistent pattern of cost overruns, adverse impacts on competition, delays in construction, construction defects, safety problems and diversity issues.

Beacon Hill Institute Study Finds PLAs Increase Cost of School Projects in Connecticut (September 2004)

This study conducted by the Beacon Hill Institute at Suffolk University found that the use of PLAs on school construction projects in Connecticut increased the cost of the projects by nearly 18 percent. The report concludes that the presence of a PLA increased the projects' final base construction costs by \$30 per square foot relative to non-PLA projects.

"This study provides further evidence that PLAs drive up the cost of construction projects, while discriminating against the four out of five construction workers who choose not to join a labor union," said Kirk Pickerel, ABC president and CEO.

Beacon Hill Institute Study Finds PLAs Increase Cost of School Projects in Massachusetts (September 2003)

A study completed by the Beacon Hill Institute entitled, "Project Labor Agreements and the Cost of School Construction in Massachusetts," finds that "PLA projects add an estimated \$18.83 per square foot to the bid cost of construction (in 2001 prices), representing an almost 14 percent increase in costs over the average non-PLA project. The low estimates find that actual project costs are raised by 8.4 percent; the high estimates find that bid costs are raised by 14.9 percent.

Erie County (NY) Courthouse Construction Projects: Project Labor Agreement Study (September 2001)

This study, completed by the firm of Ernst & Young, was commissioned by Erie County in New York to analyze a PLA on a public construction project. Ernst & Young concluded that "bidder participation was diminished because the county chose to utilize a PLA. Further, the use of PLAs adversely affects competition for publicly bid projects to the likely detriment of cost-effective construction... the use of PLAs strongly inhibits participation in public bidding by non-union contractors and may result in those projects having artificially inflated costs."

PLAs on Public Construction Projects: The Case For And Against (May 2001)

The Worcester Municipal Research Bureau May 21, 2001 released a study titled "Project Labor Agreements on Public Construction Projects: The Case For and Against." The study concluded that "PLAs tend to constrict the number of bidders on a project compared to those without PLAs, and are likely to reduce the savings to the public that would accrue if nonunion contractors who are employed were allowed to follow their customary methods."

Project Labor Agreements Research Study: Focus on Southern Nevada Water Authority (November 2000)

This study, completed by Neil Opfer and Jaeho Son of the University of Nevada, Las Vegas, and John Gambatese of Oregon State University, concluded that a Nevada Water Authority project PLA cost taxpayers an additional \$200,000 because the true low bidder refused to sign the PLA. The project went to a union contractor whose bid was \$200,000 higher.

Economic Evaluation of Project Stabilization Agreement For Construction Projects Funded Proposition BB (November 2000)

The project stabilization/labor agreement (PSA/PLA) for the Los Angeles Unified School District's (LAUSD) Proposition BB construction was required to end after one year unless the LAUSD or unions could prove the PLA was effective. A Price Waterhouse Coopers study requested by the LAUSD was "unable to conclusively determine whether the PSA has had either a net positive or net negative economic impact for the District, [and] there is anecdotal information which suggests that the PSA has to date had neither a significant positive nor a significant negative net impact." Despite the study's findings, the school board voted 5-2 to continue with the PLA, supporting the thesis that PLAs are implemented by public officials because of political concerns and not on the basis of sound public policy.

Project Labor Agreement in Minnesota (September 2000)

"Project Labor Agreements in Minnesota" was completed by Zachary C. Kleinsasser of Albion College. The study outlines inefficiencies with construction projects that contain PLAs between the months of June and August in the year 2000.